



GARY E. JOHNSON  
GOVERNOR

*State of New Mexico*  
**ENVIRONMENT DEPARTMENT**  
*Hazardous Waste Bureau*  
2905 Rodeo Park Drive East, Building 1  
Santa Fe, New Mexico 87505-6303  
Telephone (505) 428-2500  
Fax (505) 428-2567  
[www.nmenv.state.nm.us](http://www.nmenv.state.nm.us)



JOHN R. D'ANTONIO, JR.  
SECRETARY

**VIA FACSIMILE  
CERTIFIED MAIL  
RETURN RECEIPT REQUESTED**

November 6, 2002

Mr. Ralf Erickson, Area Manager  
Office of Los Alamos Site Operations  
Department of Energy  
528 35th Street, Mail Stop A316  
Los Alamos, New Mexico 87544

Dr. John Browne, Director  
Los Alamos National Laboratory  
P.O. Box 1663, Mail Stop A100  
Los Alamos, New Mexico 87545

**SUBJECT: NOTICE OF VIOLATION FOR FAILURE TO SUBMIT PERMIT  
MODIFICATION REQUESTS PRIOR TO CONVEYANCES OF  
TRANSFERS OF PROPERTY UNDER PUBLIC LAW 105-119,  
SECTION 632, AT LOS ALAMOS NATIONAL LABORATORY  
EPA ID: NM0890010515**

Dear Mr. Erickson and Dr. Browne:

The New Mexico Environment Department ("NMED") is issuing the U.S. Department of Energy and the University of California Regents (collectively "the Permittees") this Notice of Violation ("NOV") for failure to submit permit modification requests prior to conveyances or transfers of property under Public Law 105-119, Section 632 ("PL 105-119"), to the U.S. Department of Interior, the County of Los Alamos, and/or the New Mexico Highway and Transportation Department.

Pursuant to the New Mexico Hazardous Waste Act ("HWA"), NMSA 1978, Section 74-4-4.2 (1981); to 20 NMAC 4.1.900 and 901, promulgated pursuant to the HWA; to 40 CFR Section 270.42, promulgated pursuant to the Resource Conservation and Recovery Act ("RCRA"); and to Permit Number NM0890010515, the Permittees are required to submit a permit modification

request to the NMED for each transfer, *prior to conducting the transfer*. The Permittees must also conform to all other requirements of the foregoing legal authorities.

Pursuant to DOE's "Tracts to be Conveyed or Transferred under Public Law 105-119," attached hereto as "Exhibit A," thirteen tracts were scheduled for transfer on October 31, 2002. Upon NMED's information and belief, at least, three of those tracts have been transferred as of issuance of this NOV. Each of the listed tracts is a portion of the facility permitted under NM0890010515.

In a letter regarding tracts scheduled for conveyance or transfer under PL 105-119, from Laurie King of the U.S. Environmental Protection Agency ("EPA") to Theodore Taylor of DOE, dated October 4, 2002, EPA informed DOE that "[f]or all tracts, there will need to be a RCRA permit modification to change the boundaries of the facility. For tracts which contain SWMU's in the RCRA permit, LANL will need to propose a remedy selection for each SWMU to NMED. In other words, each SWMU will require either: no further action, cleanup, monitoring, or combination thereof. Remedy selection is a Class III permit modification, which includes public participation. The timing on when to initiate the permit modification process, before land transfer or after, is NMED's decision." NMED considers each conveyance or transfer which alters the property boundary to substantially alter the facility. Each conveyance or transfer may also require new corrective action conditions to address legal authority and responsibility, access for investigation and remediation, and other issues related to transfer or conveyance in the context of corrective action.

For the foregoing reasons, and other not listed herein, NMED has determined that each conveyance or transfer conducted pursuant to PL 105-119 is a Class III modification to the existing permit. The modification request process must follow the procedures outlined in 40 CFR Section 270.42. As required by that section, the modification request must occur *prior* to the conveyance of any property. Regarding any tract already conveyed or transferred, the modification request must address the consequences, legal and technical, of that conveyance or transfer, and the proposed remedy, in accordance with Section 270.42.

Pursuant to NMSA 1978, Section 74-4-10 (1977), NMED may: (1) issue a Compliance Order requiring compliance immediately or within a specified time period or assessing a civil penalty for any past or current violation of up to \$10,000 per day of noncompliance for each violation, or both; or (2) commence a civil action in District Court for appropriate relief, including a temporary or permanent injunction. Any such order may include a suspension or revocation of any permit issued by NMED.

Mr. Ralph Erickson and Dr. John Browne  
November 6, 2002  
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NMED hereby requires the Permittees to submit permit modification requests, pursuant to the aforementioned legal authorities and containing the information specified above, for all transfers already conducted. The Permittees shall also submit the required permit modification requests for all transfers currently scheduled to occur within the time frames specified by the aforementioned legal authorities. The Permittees must submit all required permit modification requests within fifteen (15) days of receipt of this letter. Failure to comply may result in initiation of formal enforcement actions as outlined above.

Please contact me at (505) 428-2500 if you have questions regarding this NOV.

Sincerely,



James P. Bearzi  
Chief  
Hazardous Waste Bureau

JPB:jry

cc: J. Kieling, NMED HWB  
G. Lewis, NMED, WWMD  
L. King, EPA Region VI  
R. Mayer, EPA Region VI  
J. Mullen, NMED GGC  
D. Cobrain, NMED HWB  
J. Young, NMED HWB  
J. Vozella, DOE OLASO, MS A316  
G. Turner, DOE OLASO, MS A316  
E. Trollinger, DOE OLASO, MS A316  
B. Ramsey, LANL RRES-DO, MS J591  
D. McInroy, LANL RRES-ER, MS M992  
M. Kirsch, LANL RRES-ER MS 992  
J. Elvinger, LANL RRES-SWRC, MS K490  
G. Bacigalupa, LANL RRES-SWRC, MS K490